

# EMERGENCY

STATE OF CALIFORNIA - OFFICE OF ADMINISTRATIVE LAW  
NOTICE OF REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2009-0612-01E</b>
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For use by Office of Administrative Law (OAL) only

2009 JUN 12 PM 12:45

OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
Business, Transportation & Housing

AGENCY FILE NUMBER (if any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)		FIRST SECTION AFFECTED		2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER		FAX NUMBER (Optional)	
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER		PUBLICATION DATE	

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Public Infrastructure Advisory Commission (PIAC)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 7700, 7701, 7702, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710, 7711, 7712
TITLE(S) 21	AMEND
	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)


<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Jim Bourgart	TELEPHONE NUMBER (916) 323-5412	FAX NUMBER (Optional) (916) 327-0051	E-MAIL ADDRESS (Optional) jbourgart@bth.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 6.10.09
TYPED NAME AND TITLE OF SIGNATORY DALE BONNER, Secretary of the Business, Transportation and Housing Agency	

For use by Office of Administrative Law (OAL) only

**ORDER ESTABLISHING THE PUBLIC INFRASTRUCTURE ADVISORY  
COMMISSION AND REGULATIONS RELATING THERTO**

**TITLE 21. PUBLIC WORKS**  
**DIVISION 3. BUSINESS, TRANSPORTATION AND HOUSING AGENCY**  
**CHAPTER 7. PUBLIC INFRASTRUCTURE ADVISORY COMMISSION**

**ARTICLE 1. ESTABLISHMENT AND DEFINITIONS**

**§ 7700 Establishment of Public Infrastructure Advisory Commission**

(a) By the authority set forth in Government Code section 13978 and Streets and Highways Code section 143, subdivision (a), paragraph (5), the Public Infrastructure Advisory Commission (Commission) is hereby established within the Business, Transportation and Housing Agency.

(b) The Commission's business shall be conducted in accordance with sections 7701 through 7712 of these regulations.

Note: Authority cited: Section 11342.2, Government Code and Section 143, Streets and Highways Code. Reference cited: Section 143, Streets and Highways Code.

**§ 7701 Establishment of Commission**

(a) There is the Public Infrastructure Advisory Commission (Commission) established within the Business, Transportation and Housing Agency (Agency) pursuant to Streets and Highways Code section 143, subdivision (a), paragraph (5).

(b) The Commission is under the direct control and supervision of the Secretary and it is operated as a program under the Agency.

(c) The Commission shall serve as an advisory board.

(d) The Commission shall operate and conduct its business pursuant to its statutory purpose, which shall include advising the California Department of Transportation and regional transportation agencies, as defined in Streets and Highways Code section 143, in developing transportation projects through performance-based infrastructure projects, otherwise called public-private partnerships.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

## **§ 7702 Definitions**

- (a) "Agency" means the Business, Transportation and Housing Agency.
- (b) "Commission" means the Public Infrastructure Advisory Commission.
- (c) "Member or commissioner" means a person appointed by the Secretary to serve on the Commission.
- (d) "Secretary" means the Secretary of the Business, Transportation and Housing Agency.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

## **ARTICLE 2. STRUCTURE, PROCEDURE AND CONDUCT OF BUSINESS OF THE PUBLIC INFRASTRUCTURE ADVISORY COMMISSION**

### **§ 7703 Commission Membership**

- (a) Members of the Commission shall be appointed by the Secretary and shall hold office at the pleasure of the Secretary.
- (b) The Commission may organize itself into committees.
- (c) The Commission may use staff and consultants to carry out its functions. Staff work may also be provided by the Agency or personnel from departments or programs within the Agency.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

### **§ 7704 Meetings**

- (a) Regular meetings of the Commission shall be held at least four times annually. Notice of all regular meetings of the Commission and an agenda of such meetings enumerating the items to be considered at the meeting shall be mailed to each commissioner seven days before the day on which the regular meeting of the Commission is scheduled. The agenda shall include the items of business to be transacted, and no item shall be added to the agenda unless a statement is included setting forth the unforeseen emergency condition. Notice of such meeting shall be given at least one week in advance of such meeting to any person who requests such notice in writing. A person may request and be provided notice for all meetings of the Commission or may limit his request to notice for a specific meeting or meetings.
- (b) All meetings of the Commission, with the exception of executive sessions permitted under Government Code section 11126, are open meetings properly announced in accordance with the provisions of the Bagley-Keene Open Meeting Act (commencing with Government Code section 11120).

(c) A quorum at all meetings of the Commission shall consist of a majority of the voting members of the whole Commission.

(d) The act of a majority of a quorum shall be the act of the Commission.

(e) Commission meetings, where possible, are recorded electronically. Otherwise, the Commission shall keep accurate minutes of all meetings and make them available to the public. The original copy of the minutes is that signed by the Executive Director and is the evidence of taking any action at a meeting. Any resolution that may be adopted at a meeting shall be entered in the text of the minutes by reference.

(f) Commission meetings, when appropriate, may be held in accordance with Government Code Section 11123.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

### **§ 7705 Special and Emergency Meetings**

In addition to the Bagley-Keene Open Meetings Act, the following shall be defined as a special and emergency meeting and shall apply in the appropriate instance.

(a) Special meetings of the Commission may be called at any time by the chair or by a majority of the Commission. In the event such special meeting is called, notice will be sent to those who have requested such notice as provided in this article.

(b) Emergency meetings of the Commission may be called at any time by the chair or a majority of the Commission when such meeting is necessary to discuss an unforeseen emergency condition. In the event such emergency meeting is called, notice will be sent to those who have requested such notice by such means as the Executive Director deems appropriate.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

### **§ 7706 Committees and Committee Meetings**

(a) The Commission may organize itself into committees.

(b) After consulting with members of the Commission, the Chair of the Commission shall appoint the members of the committees of the Commission, subject to the approval of the Secretary. Committees shall be composed of no more than four members. Two members shall constitute a quorum. Majority vote of the committee and at least two votes shall be required for committee action.

(c) Should a committee lack a quorum, the Commission chair shall appoint temporary committee members to establish a quorum. If the Commission chair is not available, the committee chair may appoint temporary committee members. In the absence of either the Commission chair or committee chair, the committee member present may appoint temporary members. The Commission chair shall not serve on any of the committees except

in an ex-officio capacity. Each committee shall elect one of its members, on an annual basis, as the committee chair who shall preside at all committee meetings. In the absence of the elected chair, the committee members present shall select a temporary chair.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

#### **§ 7707 Chair**

(a) The Secretary shall serve as the interim Chair of the Commission. As the interim Chair, the Secretary may designate an interim Vice-Chair from the members of the Commission.

(b) As interim Chair, the Secretary shall preside over all Commission meetings and, at a time deemed appropriate by the Secretary, set a meeting of the Commission at which time the members of the Commission shall elect a Chair and Vice-Chair from their number who shall not be the Secretary, subject to the approval of the Secretary.

(c) Upon the expiration of the period of service of the Secretary as the interim Chair, each year at a meeting determined by the Commission, the members of the Commission shall elect a Chair from their number, subject to the approval of the Secretary. The Chair so elected shall serve in that capacity for the year commencing March 1 next following provided that no Chair of the Commission so elected shall serve as Chair for successive terms.

(d) Subject to the supervision of the Secretary, the Chair shall preside over all Commission meetings. The Chair shall sign and countersign, or authorize another Commission member to sign or countersign, all certificates, contracts, and other instruments of the Commission. The Chair shall also report to the Commission and the Secretary and shall perform all such other duties as are incident to discharge the duties of the Chair or properly required by the Commission.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

#### **§ 7708 Vice-Chair**

(a) Each year at the same meeting that a Chair is elected, the members of the Commission shall elect a Vice-chair from their number, subject to the approval of the Secretary. The Vice-chair thus elected shall serve in that capacity for the same year during which the Chair elected shall serve, and the Vice-chair so elected shall preside in the absence of the Chair. The Vice-chair may, at the request of the Chair, preside at a meeting notwithstanding that the Chair is present at that meeting.

(b) In absence of the Chair or in the event of death, disability, refusal or inability to act, the Vice-Chair shall perform the duties of the Chair and when so acting shall have all the powers and be subject to all the restrictions of the Chair. The Vice-Chair shall also have those powers and discharge those duties as may be assigned from time to time by the Commission or the Secretary.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

#### **§ 7709 Absence of Chair and Vice Chair**

In the event of the absence of both the Chair and the Vice-chair from any meeting, the members of the Commission present shall elect a Chair from their number to preside at that meeting.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

#### **§ 7710 Absence of Commissioners**

The voting members of the Commission must notify the Executive Director or Commission Chair when they will be prevented from attending a duly noticed Commission meeting or committees of which they are a member and the reasons therefore. Should commissioners absent themselves from all regularly noticed meetings of the Commission or committee meetings for 90 days consecutively from the last attended meeting, without prior notification of a justifiable reason or without permission of the Chair, the Commission shall describe the facts and circumstances in its minutes or by special resolution and forward said minutes or special resolution to the Secretary or the Agency.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

#### **§ 7711 Ethics, Economic Interest**

(a) Commissioners, as members or as a group, will not accept gifts and gratuities for social purposes. These may include but are not limited to beverages, meals, hosted functions, tickets to athletic or sporting events, entertainment, or theatrical performances, trips or excursions.

(b) Each Commission member shall file with the Agency a Statement of Economic Interest (Form 700) pursuant to an appropriate disclosure category consistent with the Agency Conflict of Interest Code, title 21, California Code of Regulations, section 7000.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

### **§ 7712 Procedural Rules**

Procedural rules not established by statute or regulations may be amended at any meeting by majority vote of the members of the Commission, provided that such proposed amendment has been read into the minutes of the previous meeting of the Commission.

Note: Authority cited: Section 11342.2, Government Code. Reference cited: Section 143, Streets and Highways Code.

## **FINDING OF EMERGENCY**

The Secretary of the Business, Transportation and Housing Agency (Agency) finds that an emergency exists such that immediate adoption of regulations is required to prevent significant harm to the peace, health, safety or general welfare, as is set forth in Government Code section 11342.545. Agency does not have a record of any person requesting a notice of regulatory actions under Government Code section 11346.1(a)(1). Accordingly, Government Code section 11346.1(a)(2) does not apply as no person requested notice.

### **Facts Which Constitute the Emergency.**

Legislation passed during the Second Extraordinary Session of 2009-2010, S.B. No. 4, authorizes the Business, Transportation and Housing Agency to establish the Public Infrastructure Advisory Commission (PIAC), and was part of an emergency budget package intended to resolve the current State fiscal emergency declared by the Governor in connection with significant budgetary and cash deficits projected for the 2009-10 Fiscal Year. This legislation and PIAC are integral to efforts to improve the State's fiscal condition by bringing necessary additional resources to bear on State infrastructure projects, including the repair of dangerously obsolete or inadequate facilities. The PIAC plays a statutorily-mandated early role in the identification of such projects suitable for performance-based infrastructure projects also referred to as public-private partnerships. Failure to immediately establish the PIAC as an established and functional entity as early as possible in the process would compromise the implementation of projects that could otherwise be underway without delay. These projects will yield immediate benefits through job creation and enhanced economic activity and thereby avoid serious harm to the general welfare of the State.

Based on updated estimates developed since the Governor's Strategic Growth Plan, it has been determined that California has current ten-year transportation infrastructure needs of \$107 billion and a ten-year gap of \$50.3 billion between the funds that are necessary and the funds that are available through public resources. There are limited amounts of private funds available for investment in transportation infrastructure projects. California is in direct competition with other states, such as Texas, Florida and Virginia, as well as with other countries, to attract and obtain investments of these private funds. Regulations to establish the PIAC immediately – as was intended by the passage of the emergency budget package and S.B. No. 4 noted above – is necessary to identify feasible and promising State public-private partnership projects. Any delay in this function will result in a loss of these private funds to California and will worsen the state's fiscal condition.

## **AUTHORITY AND REFERENCE**

Government Code section 11342.2 authorized Agency to adopt the proposed regulations, which would implement, interpret and make specific section 143 of the Streets and Highways Code.



## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Agency proposes to adopt Chapter 7. Public Infrastructure Advisory Commission, Articles 1 and 2, Sections 7700 - 7712, in Title 21, of the California Code of Regulations.

Government Code section 11342.2 authorizes a state agency to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute.

S.B. No. 4 was passed during the Second Extraordinary Session of 2009 to authorize the Business, Transportation and Housing Agency to establish a Public Infrastructure Advisory Commission. The legislation and the commission that is established is critical in resolving the current economic crisis in California. The proposed emergency regulatory action will establish, define and set up the structure, procedure and conduct of business of the Public Infrastructure Advisory Commission without costly delay.

## DISCLOSURES REGARDING THE PROPOSED ACTION

Agency has made the following initial determinations:

*Mandate on local agencies and school districts:* None

*Cost or savings to any agency:* None

*Cost or savings to any state agency:* None.

*Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:* None.

*Other non-discretionary cost or savings imposed on local agencies:* None.

*Costs or savings in federal funding to the State:* None.

*Significant, statewide adverse economic impacts directly affecting business including the ability of California businesses to compete with businesses in other States:* None.

*Cost impacts on a representative private person or business:* Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

*Adoption of these regulations will not:*

1. create or eliminate jobs within the State of California;
2. create new businesses or eliminate existing businesses within the State of California;
3. affect the expansion of businesses currently doing business within the state of California.

*Significant effect on housing costs:* None.

## **SMALL BUSINESS DETERMINATION**

Agency has determined that the proposed regulatory action will not affect small businesses.